"This insurance is against all risks of loss of or damage to the subject-matter insured but shall in no case be deemed to extend to cover loss damage or expense proximately caused by delay or inherent vice or nature of the subject-matter insured".

This clause makes it quite clear that the policy does not cover loss or damage caused by inherent vice or nature of the subject-matter insured. I found no substance in the contention of the plaintiffs that they were not bound by the Institute of Cargo Clauses (All Risks). If the plaintiffs were not so bound, it seemed to me that the defendants were entitled to invoke the provisions of section 55(2)(c) of the Marine Insurance Act, 1906, of England, by virtue of the provisions of section 5(1) of the Civil Law Ordinance (Cap. 24) which provides:

"In all questions or issues which arise or which have to be decided in the Colony with respect to the law of ....marine insurance....and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by Statute".

Section 55(2)(c) of the Marine Insurance Act, 1906, provides as follows:

"Unless the policy otherwise provides, the insurer is not liable for....inherent vice or nature of the subject-matter insured".

The third question I had to decide was whether by insuring against the specific risk of damage by sweating the plaintiffs, by express words or by necessary inference, had insured against loss or damage caused by inherent vice. I accepted as correct the following statement of the law in *British Shipping Laws*, Vol. 10, paragraph 859:

"*The defence of inherent vice can only be excluded by express words or by necessary inference — i.e. by covering a peril which could only be caused by inherent vice.* For example, where tinned goods are insured against 'blowing of tins' it is submitted that the defence of inherent vice is thereby excluded. But if the peril is one which (like mould and mildew) can be caused by some external agency, even though more commonly caused by inherent vice, the better view is that only damage from an external cause is covered".

Both counsel accepted as correct the view as to sweat expressed in the following extract from *Lloyd's Survey Handbook*, Revised Edition, 1956, at pages 29 and 30:

"Cargo is said to be damaged by *ship's sweat* when moisture condensing on ship's steelwork runs back on it and saturates it, or when cargo is wetted by contact with ship's steelwork on which moisture condenses. A corresponding expression has come into use during the last ten years to denote the condensation of moisture directly on the cargo, namely *cargo sweat*, a term which, if not absolutely correct, is in common usage and must be clearly defined.

In this case the moisture is not first condensed on ship's steelwork, dripping afterwards on cargo, but condenses directly on cargo, the ship's steelwork usually remaining dry".

According to this view, sweat is moisture in the air condensing on the ship's steelwork or directly on the cargo. I accepted this view. It seemed to me that sweat had nothing to do with inherent vice: this was conceded by counsel for the plaintiffs. Both counsel also accepted as correct the view expressed in the following extract from *Lloyd's Survey Handbook*, Revised Edition, 1956, at pages 45 and 46:

"Various commodities are hygroscopic and, if not packed in a water-tight container, may absorb the moisture content of the atmosphere to such an extent as literally to give the appearance of having been saturated; a surveyor might well, without a knowledge of the inherent properties of such commodities, attribute damage to sweat, contact with water, etc.".

As the peril of sweat could only be caused by an external cause and not by inherent vice, it seemed clear to me that by insuring against the specific risk of damage by sweating the plaintiffs had not insured, by express words or by necessary inference, against loss or damage caused by inherent vice.

Both Norman, the cargo surveyor called by the plaintiffs, and Tunbridge, the cargo surveyor called by the defendants, however, testified that according to the usage of surveyors the term "sweating" covers the dampness of sugar caused by absorption of moisture from the atmosphere. In the light of the two extracts from *Lloyd's Survey Handbook* which are set out above, I decided that this use of the word is incorrect. I proceeded to consider, however, what the position would be if this use of the word is correct. It seemed to me that, in that case, the most that could be said was that damage by sweating is a peril which could be caused by an external cause or by inherent vice. And applying the principle stated in the passage cited above from *British Shipping Laws* to a policy covering such a peril, I came to the conclusion that only loss or damage resulting from sweating caused by an external cause was covered by the policy.

It was for the above reasons that I dismissed the plaintiffs' claim with costs.

Claim dismissed.

Solicitors: *Laycock & Ong*; *Allen & Gledhill.*

Re MARTIN LEE; Ex parte BAN HIN LEE BANK LTD.

[O.Bk.J. (Choor Singh J.) April 25, 1964]

[Singapore — In Bankruptcy No. 297 of 1962]

Bankruptcy — Proof of debt — Adjudication on, by Official Assignee — Application to reverse or vary decision of Official Assignee — Bankruptcy Ordinance (Cap. 11), sch. B, r. 28.

Bankruptcy — Surplus — Rate of interest chargeable before receiving order and after — Bankruptcy Ordinance (Cap. 11), s. 43(7) & (8).

In 1951 the applicant bank granted overdraft facilities to the debtor on the security of a deposit of title deeds of certain properties. Following from this arrangement the bank on July 1, 1957 obtained judgment against the debtor in the sum of $318,815.93 being principal and $9,835.74 being interest at 75 cents per $100 per month. At the debtor's request the bank agreed not to enforce the judgment and the debtor agreed, *inter alia*, to pay interest on the amount due under the judgment at 75 cents per $100 per month. Subsequently the bank proceeded against the debtor in bankruptcy and receiving and adjudication orders were made against him on November 9, 1962. On February 15, 1963 the bank filed a proof of debt wherein the bank claimed the amount due under the judgment together with interest thereon at 6% per annum up to the date of the receiving order.

On February 5, 1963 the Official Assignee sold certain properties of the debtor and the proceeds of sale amounting to $287,880.34 were paid to the bank. On May 14, 1963 further properties of the debtor were sold with the result that there was a surplus in the bankruptcy. Following this sale, the bank on June 17, 1963 filed another proof of debt the material difference between this proof and the first proof being that the bank now claimed interest on the amount due on the judgment at 75 cents per $100 calculated with monthly rests from date of judgment to May 31, 1963. On June, 27, 1963 the Official Assignee adjudicated on the two proofs. He admitted the first proof and disallowed and rejected the second.

The bank applied to the court by way of motion for an order under rule 28 of schedule B to the Bankruptcy Ordinance to reverse or vary the decision of the Official Assignee in respect of the second proof of debt. The bank in these proceedings contended that there was a special agreement made between the parties subsequent to the judgment, and by virtue of the said agreement they were entitled to claim under section 43(8) of the Bankruptcy Ordinance interest on the judgment debt at more than the rate permissible under the Ordinance because there was now a surplus in the bankruptcy. The Official Assignee maintained that there was no such agreement to pay a higher rate of interest and that if there was, the bank had committed a fundamental breach of the said agreement by making the debtor a bankrupt and therefore the bank was not entitled to enforce any rights under the said agreement. It was further urged on behalf of the Official Assignee that the bank waived the said agreement when it filed its first proof of debt in the bankruptcy based on the judgment on which it claimed interest at 6% per annum; and that by not claiming interest at the agreed rate of 75 cents per $100 per mensem the bank abandoned the said agreement.

Held: (1) on the facts there was a special agreement made subsequent to the judgment under which the debtor agreed to pay the bank interest on the amount due under the judgment at the rate of 75 cents per $100 per mensem calculated with monthly rests;

(2) it is a clear principle of law that where there is a fresh contract evidenced by the forbearance of a creditor or in any other way, for the payment of a higher rate of interest on a judgment than that allowed by law, such a contract is valid and enforceable at law. *In re Agriculturist Cattle Insurance Co., Ex parte Hughes;* (1)

(3) the forbearance on the part of the bank was to operate only for a reasonable time. The time allowed to the debtor before enforcement was reasonable and therefore there was no fundamental breach of the agreement by the bank;

(4) by filing the earlier proof in which a lesser rate of interest was claimed, the bank had not waived its claim to the higher rate of interest because when the bank filed its first proof of debt there was no likelihood of all the debts proved in the bankruptcy being paid in full;

(5) by virtue of section 43(8) of the Bankruptcy Ordinance, the bank was entitled to interest at 4% per annum up to the date of the receiving order on the amount due under the judgment;

(6) as there was a surplus in the bankruptcy the bank was further entitled under section 43(8) to the difference between the interest agreed, i.e. 75 cents per $100 per mensem, and the interest received at 4% per annum up to the date of the receiving order;

(7) as there was still a surplus thereafter, the bank was entitled to interest at the rate of 4% per annum under section 43(7) from the date of the receiving order to the date of payment;

(8) the interest payable by the Official Assignee to a creditor under section 43(7) is payable on the creditor's whole debt proved in the bankruptcy and the whole debt cannot be limited to the amount of the principal but must include the whole amount of the agreed interest calculated up to the date of the receiving order;

(9) the bank was not entitled to interest at the agreed rate after the date of receiving order; the interest payable after a receiving order is at the rate laid down under section 43(7) of the Ordinance.

Cases referred to:—

(1) *In re Agriculturist Cattle Insurance Company, Ex parte Hughes* 4 Ch. D. 34.

(2) *Economic Life Assurance Society* v. *Usborne* [1902] A.C. 147.

(3) *Loh Ngai Poh a bankrupt No. 1 Ex parte Yap Tai Chee & Hoh Sum Chee* (1923), 4 F.M.S.L.R. 47.

(4) *In re A Debtor, Ex parte The Official Receiver and Trustee* v. *United Auto and Finance Corpn. Ltd.* [1947] 1 All E.R. 417.

BANKRUPTCY.

L. A. J. Smith and *H. M. Dyne* for the applicant.

Anthony Wee (Assistant Official Assignee) for the Official Assignee.

Cur. Adv. Vult.

Choor Singh J.: This is a motion under rule 28 of Schedule B to the Bankruptcy Ordinance to reverse or vary the decision of the Official Assignee in respect of a proof of debt for $233,319.52 by the Ban Hin Lee Bank Ltd.

The facts are as follows. In the year 1951 the bank at the request of the debtor granted him overdraft facilities on the security of a deposit of title deeds of his properties at Siglap and Chatsworth Park. The amount due on the overdraft slowly increased and despite the efforts made by the bank to have the debtor reduce his commitments nothing was done by the debtor. On 1st July 1957 the bank obtained judgment against the debtor in the sum of $318,815.93 being principal and $9,835.14 being interest at 75 cents per $100 per month. The debtor requested the bank not to enforce the judgment against him and in particular not to take bankruptcy proceedings against him. He asked the bank to allow him time to pay the judgment debt

and to sell his properties the title deeds of which were deposited with the bank. The bank was prepared to do so provided the debtor was able to furnish further security to cover his liabilities with the bank and provided further that he was prepared to pay interest on the amount due under the judgment at 75 cents per $100 per month. The debtor agreed to these terms and deposited with the bank by way of further security the title deeds relating to 297 Tanglin Road which was owned by his sister Regina May Wong Lee. Thereafter efforts were made by the debtor to sell the Siglap property at a suitable price but without success.

In September 1959 the bank pressed for payment and the debtor offered to furnish further security if the bank would refrain from enforcing the judgment. The bank agreed and the debtor's father C. M. Lee and his sister Regina May Wong Lee mortgaged certain properties to the bank and the debtor's sister, Christina Loke, executed a letter of guarantee guaranteeing the debtor's overdraft up to but not exceeding $50,000.

In October 1961 the bank called upon the debtor to take positive steps to settle his outstanding commitments as interest was mounting and the amount due to the bank was increasing every month. The debtor made certain proposals to the bank in November 1961 but these proposals were not acceptable to the bank.

On 15th November 1961 it came to the notice of the bank that the Comptroller of Income Tax had obtained final judgment against the debtor in Suit No. 350 of 1961 in the sum of $505,121.90 with costs. The bank learnt further that the debtor's properties at Siglap and Chatsworth Park the title deeds of which were deposited with the bank as security had been attached by the Comptroller of Income Tax under a writ of seizure and sale. In view of these circumstances the bank sought legal advice and were informed that the attachment of the immoveable properties was a circumstance endangering the bank's security. The bank were further advised that if the debtor was made a bankrupt and the properties attached were not sold on or before the date of adjudication, the Official Assignee could call upon the Comptroller of Income Tax to lift the seizure thereby restoring the bank's priority over the Comptroller of Income Tax to the said properties of the debtor. The bank commenced bankruptcy proceedings against the debtor and receiving and adjudication orders were made against the debtor on the 9th day of November 1962.

On 15th February 1963 the bank filed a proof of debt in the debtor's bankruptcy claiming the sum of $422,026.35 as being the amount due to them by the debtor, made up as follows:—

Balance of judgment in Suit No. 331 of 1957	$325,563.19
Solicitors' bill of costs	4,360.00
Interest on judgment debt of $325,563.19 at 6% per annum from 22.2.58 to 9.11.62	92,103.16
	$422,026.35

On 5th February 1963 the Official Assignee sold the debtor's properties at Siglap and Chatsworth Park by public auction and the net proceeds of sale amounting to $287,880.34 were paid to the bank.

On 14th May 1963 the Official Assignee caused to be sold by public auction other immovable properties belonging to the debtor. This sale realised the gross amount of $3,322,000 with the result that there is now a surplus in the bankruptcy. The Official Assignee has sufficient funds in his hands to pay a dividend of 100% and interest as allowed by the Bankruptcy Ordinance.

On 17th June 1963 the bank filed another proof of debt with the Official Assignee which has been described as the "amended proof", claiming the sum of $237,679.52 being money due by the debtor under a current account. In support of this proof a statement of account copied from the bank's ledger was attached showing a running account from July 1951 to 31st May 1963 and on the latter date the amount due by the debtor is stated to be $233,319.52. The account includes the amount of $318,815.93 for which the bank obtained judgment in 1957. The bank has continued to debit the debtor's account every month with interest at 75 cents per $100 on the amount due on the judgment right up to 31st May 1963. The second proof is indeed a double proof for it is in respect of the same debt which is the subject matter of the judgment for $318,815.93. The only difference between the two claims is that in the first proof which is based on the judgment, interest is claimed on the judgment at six percent per annum from 22nd February 1958 to the date of the receiving order i.e. 9th November 1962, whereas in the second proof interest is claimed on the amount due on the judgment at 75 cents per $100 calculated with monthly rests from the date of judgment to 31st May 1963. The amount claimed in the second proof is less than that of the first proof because in March 1963 the bank received $287,880.34 being the net proceeds of sale of the Siglap and Chatsworth Park properties the title deeds of which had been deposited with the bank as security and the bank has given credit for this sum in their ledger account.

On 27th June the Official Assignee adjudicated on the bank's two proofs and after hearing evidence the Official Assignee rejected the claim

in the first proof to the extent of $4,360 on the following grounds:—

"That this appears to be a solicitor and client bill of costs in respect of matters not relevant in these proceedings and also that the said bill of costs has not been taxed."

The balance of the claim in the first proof was allowed and admitted to rank for dividend at $219,786.01 which sum was arrived at as follows:—

"Balance of judgment in Suit No. 331 of 1957 with interest thereon at 6 per cent per annum from 22.2.58 to 9.11.62 ..		$417,666.35
Less net proceeds of sale of:—		
7 & 9 Chatsworth Park	$140,308.84	
Land at Siglap	$147,571.50	$287,880.34
		$129,786.01

On the same day the Official Assignee disallowed and rejected the whole of the claim in the second proof on the following grounds:—

"(i) That the sum of $233,319.52, being the balance due on a current account No. 1804 referred to in your said proof under reference appears to have been merged in the final judgment in Suit No. 331 of 1957 on 1.7.57 for which a separate proof has been lodged and admitted in these proceedings.

(ii) That the sum of $4,360, being Donaldson & Burkinshaw's bill of costs also appears to be the subject matter of your claim in the separate proof referred to above which has been rejected in the whole."

On 8th October 1963 the bank's solicitors commenced these proceedings by filing a motion paper in the following terms:—

"Mr. Henry Mosley Dyne, counsel for the abovenamed applicant moves for an order that the amended proof of debt submitted on the 17th day of June, 1963 may be admitted and that the decision of the Official Assignee to reject the Proof may be reversed on the grounds that the debt is provable in bankruptcy under section 40(3) of the Bankruptcy Ordinance (Cap. 11) and is not merged in the final judgment in Suit No. 331 of 1957 dated the 1st day of July, 1957 as held by the Official Assignee when rejecting the amended proof."

On 16th October 1963 the Official Assignee filed his memorandum of disallowance in which his grounds of disallowance are stated to be as follows:—

"Mr. Dyne, solicitor for the creditor, submits that his client is entitled to charge interest on the judgment debt at more than the rate permissible under the Bankruptcy Ordinance where the parties have agreed to such rate of interest. In this connection, reference was made to section 43(8) of the Bankruptcy Ordinance. In support, Mr. Dyne has produced three documents which indicate that the said parties i.e. his client, the bank and the bankrupt, have agreed that the interest chargeable is at the rate of 75 cents per $100 per month.

Alternatively, Mr. Dyne submits that Order XXXIX rule 13 is applicable in that a judgment creditor is entitled to a higher rate of interest than allowed under this order where the parties have agreed to such higher rate of interest.

The documents relate to an account which is not the subject matter of this inquiry, and I therefore hold that the creditor in these proceedings has not proved that this was, *inter alia*, an agreement to pay a higher rate of interest on the judgment debt. Even though, it may be argued, the documents referred to above support the contention that there was such an agreement, a view which I do not accept, it appears that the creditor has caused a fundamental breach of the agreement. Mr. Wee Koh Yeow, representative of the bank, stated in evidence that such an agreement was entered into on the understanding that the said bank would forbear to take bankruptcy proceedings against the bankrupt.

In the circumstances, I hold that interest is chargeable at the rate of 6% per annum on the balance of the said judgment debt, and not at the rate of 75 cents per $100 per month as claimed by the creditor in this inquiry."

At the hearing of this motion when it was pointed out by the court to Mr. L. A. J. Smith who appeared for the bank that the second proof was a double proof, he sought leave to amend the motion. The Official Assignee not opposing, leave to amend was granted and the amended motion reads as follows:—

"Mr. Henry Mosley Dyne, counsel for the abovenamed applicant moves for an order that the amended proof of debt submitted on the 17th day of June, 1963, may be admitted as to the sum of $141,216.36 being the balance of interest due from the date of judgment in Suit No. 331 of 1957 up to 31st May, 1963, at the rate of 75 cents per $100 per month over that allowed by the Official Assignee calculated on the first proof at the rate of 6% per annum from 22nd February, 1958, to 9th November, 1962, on the ground that the interest at the higher rate was the subject of a special agreement made subsequent to the judgment and that the decision of the Official Assignee to reject the proof may be reversed as to the said sum on the grounds that the debt is provable in Bankruptcy under section 40(3) of the Bankruptcy Ordinance (Cap. 11) and is not merged in the final judgment in Suit No. 331 of 1957 dated the 1st day of July, 1957 as held by the Official Assignee when rejecting the amended proof.".

The whole purpose of the bank in filing the second proof was to claim interest on the judgment at 75 cents per $100 per mensem instead of the 6% per annum allowed by law. The bank's case is that there was a special agreement made between the bank and the debtor subsequent to the judgment. The agreement was that in consideration of the bank not enforcing the judgment against the debtor, the debtor would pay interest on the amount due on the judgment at the rate of 75 cents per $100 per mensem calculated with monthly rests. It appears that this was the rate of interest the debtor was paying on the amount of his overdraft before the bank obtained judgment against him. The stand taken by the Official Assignee when he adjudicated on the bank's two proofs was that there was no such agreement, and that, if there was, then the bank committed a fundamental breach of that agreement by making the debtor a bankrupt and the bank was therefore not entitled to any benefit under that agreement.

It is clear from the affidavits filed in these proceedings that there was a special agreement

entered into between the bank and the debtor subsequent to the judgment as alleged by the bank. It is borne out by the debtor's own words in his affidavit filed on the 16th November 1963:—

"After obtaining the said judgment against me, the said bank threatened to enforce the judgment. I then approached Mr. Wee Koh Yeow, a representative of the said bank, not to enforce the said judgment nor to take bankruptcy proceedings against me, but to allow me time to honour the said judgment debt. I asked for time to enable me to sell the said properties charged to the bank. ....It will be seen that notwithstanding the judgment debt against me, I was prepared to pay any rate of interest which was reasonable in order that no further action be taken in respect of the enforcement of the said judgment against me, either by way of execution or more particularly by way of bankruptcy proceedings. In order to forestall bankruptcy proceedings, I readily agreed to accept the aforesaid conditions in view of the fact that the rate of interest asked by the bank in order to forebear taking such action was no more than the usual banker's rate of interest which I was in any event paying prior to the said judgment debt against me."

The main issue before me is whether or not the said agreement is valid and enforceable. It is a clear principle of law that where there is a fresh contract evidenced by the forbearance of a creditor or in any other way, for the payment of a higher rate of interest on a judgment than that allowed by law, such a contract is valid and enforceable at law. See *In re Agriculturist Cattle Insurance Company, Ex parte Hughes.*[1] This case was referred to with approval by the House of Lords in *Economic Life Assurance Society* v. *Usborne.*[2] Lord Davey, in his speech observed:

"My Lords, the first case in order of date was *In re Agriculturist Cattle Insurance Co.* In that case a judgment had been recovered, but there was a fresh agreement after the judgment had been recovered to pay the loan with interest, and it was held, and it appears to me quite rightly held, that the mortgagee was entitled to his full interest notwithstanding that the original debt had been merged in the judgment — there was a new debt."

It was urged on behalf of the Official Assignee that the bank had committed a fundamental breach of the agreement by making the debtor a bankrupt. The bank's answer is that the forbearance on the part of the bank not to enforce the judgment was to be for a reasonable time. It was never agreed that the bank would never make the debtor a bankrupt. Mr. Anthony Wee who appeared for the Official Assignee conceded that the forbearance on the part of the bank was to be for a reasonable time but argued that the bank did not grant the debtor a reasonable time. The bank obtained judgment on 1st July 1957 and the receiving and adjudication orders were made against the debtor on 9th November 1962 i.e. after a period of five years. Furthermore, the bank maintains that it was compelled to take bankruptcy proceedings against the debtor when the Comptroller of Income Tax obtained judgment against the debtor for $505,121.90 and attached under a writ of seizure and sale the very properties the title deeds of which were deposited with the bank as security. The debtor had committed an act of bankruptcy. The bank's security was in jeopardy and it had no alternative but to commence bankruptcy proceedings against the debtor in order to safeguard its security. It was further argued on behalf of the bank that when bankruptcy proceedings were commenced against the debtor, he maintained that he was solvent, but he refused to sell his immovable properties as property values were rising and he was evidently playing for time so that he could obtain better prices by holding on to his properties as long as he could. Having regard to all the circumstances of the case, I am of the view that the bank gave the debtor a reasonable time to honour his judgment, and had no alternative but to commence bankruptcy proceedings against the debtor in order to safeguard its security.

It was next argued on behalf of the Official Assignee that when the Comptroller of Income Tax seized some of the debtor's immovable properties, the bank should have requested the debtor to provide further security. The bank's answer is that there was nothing to prevent the debtor offering further security to the bank and requesting the bank to drop the bankruptcy proceedings.

Lastly it was urged on behalf of the Official Assignee that the bank waived the agreement when it filed its first proof of debt in the bankruptcy based on the judgment on which it claimed interest at 6% per annum; and that by not claiming interest at the agreed rate of 75 cents per $100 per mensem the bank abandoned the said agreement. The bank filed its first proof of debt when there was no likelihood of its claim being met in full. It was only when all the debtor's immovable properties had been sold at considerably enhanced prices that there appeared to be a likelihood of a surplus in the bankruptcy. The bank then sought legal advice as to whether it could claim the agreed higher rate of interest as there might be a surplus in the bankruptcy. Acting on the legal advice received, the bank filed the second proof of debt. Under the circumstances I hold that the bank had not waived or abandoned the said agreement when it filed its first proof of debt.

The next point I have to consider is whether the bank can claim the agreed higher rate of interest in the debtor's bankruptcy. The provisions relating to interest are contained in subsections (7) and (8) of section 43 of the Bankruptcy Ordinance (Cap. 11) which read as follows:—

(7) If there is any surplus after payment of the forgoing debts it shall be applied in payment of interest from the date of the receiving order at the rate of four

dollars per centum per annum on all debts proved in the bankruptcy.

(8) Where a debt has been proved upon a debtor's estate and such debt includes interest or any pecuniary consideration in lieu of interest, such interest or consideration shall for the purposes of dividend be calculated at a rate not exceeding four per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

It is clear from the above provisions that the interest that should be paid to a creditor in the first instance is 4% per annum up to the date of the receiving order. Payment of the remainder of the agreed interest is postponed. When all the debts are paid in full, if there is a surplus, the creditor must be paid the postponed interest, that is, the difference between 4% and the rate to which he may be entitled under any agreement up to the date of the receiving order. After that, if there is a surplus, further interest is payable at the rate of 4% per annum from the date of the receiving order until the date of payment. With regard to this interest payable by the Official Assignee to a creditor subsequent to the receiving order under sub-section (7), it must be emphasised that the interest is payable on "all debts proved in the bankruptcy". The debt proved in the bankruptcy cannot be limited to the amount of the principal but must include the whole amount of the agreed interest calculated up to the date of the receiving order. See *Loh Ngai Poh a bankrupt No. 1. Ex parte Yap Tai Chee and Hoh Sum Chee,*[3] and *In Re A Debtor. Ex parte The Official Receiver and Trustee* v. *United Auto and Finance Corpn.*[4]

In the present case the bank claimed in its first proof the balance due on the judgment plus interest at 6% per annum up to the date of the receiving order. The Official Assignee should have reduced the interest from 6% to the statutory rate of 4% allowed under section 43(8). He did not do so because on the day he adjudicated upon this proof there were sufficient funds in this bankruptcy to pay all the debts in full, together with interest. The Official Assignee therefore allowed the claim for interest at 6% per annum. The Official Assignee rejected the claim of $4,360 in respect of a bill of costs. This claim was rightly rejected and the bank has no quarrel with this rejection. There is therefore no complaint as regards the Official Assignee's adjudication on the first proof of debt.

Under the second proof of debt the bank in my view is clearly entitled to claim the postponed interest, being the difference between 6% per annum and the agreed rate of 75 cents per $100 per mensem up to the date of the receiving order. After that the bank is entitled under section 43(7) to further interest at the rate of 4% per annum on "the debt proved in the bankruptcy" and the bank's debt proved in this bankruptcy is the balance of the amount due on the judgment together with interest at 75 cents per $100 per mensem up to the date of the receiving order. Under the circumstances, in addition to the payment of $129,786.01 on the first proof of debt the Official Assignee must pay to the bank in respect of its claim on the second proof:—

(a) The difference between interest calculated at 6% per annum and interest calculated at 75 cents per $100 per mensem on the balance of the amount due on the judgment up to the date of the receiving order.

(b) Further interest at 4% per annum from the date of the receiving order up to 16th March 1963 (the date on which the bank was repaid $140,308.84 being proceeds of sale of the Chatsworth Park property) on the total of the balance of the amount due on the judgment and the interest on the balance calculated at 75 cents per $100 per mensem up to the date of the receiving order.

(c) Further interest at 4% per annum from 17th March 1963 to 5th April 1963 (the date of which the bank was repaid $147,571.50 being proceeds of sale of the Siglap property) on the total of the balance of the amount due on the judgment and the interest on the balance calculated at 75 cents per $100 per mensem up to the date of the receiving order less $140,308.84.

(d) Further interest at 4% per annum from 6th April 1963 up to the date of payment by the Official Assignee on the total of the balance of the amount due on the judgment and the interest on the balance calculated at 75 cents per $100 per mensem up the date of the receiving order less $287,880.34.

For the above reasons I order that the Official Assignee pay to the bank the sums mentioned in (a), (b), (c) and (d) above and costs of the motion to be taxed.

Order accordingly.

Solicitors: *Donaldson & Burkinshaw.*

PUBLIC PROSECUTOR v. YUSOFF

[R.Cr.J. (Hashim J.) May 2, 1964]

[Kota Bharu — Criminal Revision No. 6 of 1964]

Offensive weapon — Keris — Possession of — When lawful — Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, s. 6(1).

Criminal Procedure — Charge of a technical nature — Duty of magistrate — Criminal Procedure Code (Cap. 6), s. 173.

A charge under section 6(1) of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, 1958, is of a technical nature and where the accused is not represented by counsel it is the duty of the trial magistrate to satisfy himself that the accused understands the technical nature of the charge before accepting his plea.

A keris forms part of a bridegroom's (Malay) regalia at a "bersanding" ceremony and it is lawful for the lender of a keris for such a ceremony to carry it home when it is returned to him.